

Additional Views

Senator Robert G. Torricelli Senate Governmental Affairs Committee Special Investigation

While I fully concur with the Minority Report, I am nonetheless writing in order to provide additional emphasis to two areas of the Committee's investigation.

I. Television Advertising Costs: The Root Cause of the Demand for Campaign Funds

Over the course of the Committee's investigation, much was made of the so-called thirst for campaign contributions that permeated the political system during the 1996 federal election campaign. The Committee spent countless hours investigating instances of questionable contributions and fundraising practices which were in one way or another caused by this thirst for contributions. I believe, however, that the focus of the Committee was misplaced. Instead of examining the effects of this thirst for contributions, we should also have examined its cause.¹

If it had done so, the Committee would have learned that the upwardly spiraling cost of television advertising is the driving force behind rising campaign costs and, consequently, the root cause of the fundraising machine that wreaks havoc on our political process. Curtis Gans, Director of the Study of the American Electorate, defined the importance of this issue during his testimony before the Committee. Referring to the cost of television advertising, he stated, "[i]f you want to cut the cost, improve the content, and restore the civility of the political debate, I think this is where you have to start."²

During the Committee's sole week of testimony directly on campaign finance reform,

witnesses noted the rising costs of television advertising and the detrimental impact it has on our system. Mr. Gans, who opposed the standard set of campaign finance reforms supported by Democrats, nonetheless acknowledged that “we need to look at what is driving the cost of our campaigns up, which is the cost of advertising.”³ Ann McBride, President of Common Cause, similarly stated, “[w]e believe that television is clearly driving up the cost of campaigns and clearly, if you look at what happened in the both the Presidential races, and if you look at Senate races and House races around the country, this is increasingly a larger and larger percentage of cost, and if there were a way to do something about television time, we think that this would be a very appropriate remedy.”⁴

But we need not take the word of the experts; the statistics alone paint a telling picture. In 1996, candidates and parties spent over \$400 million on TV advertising, a 76% increase since 1988.⁵ Television advertising now accounts for nearly half of all funds spent in U.S. Senate campaigns and a third of all funds spent for the House of Representatives.⁶ In some states where advertising time is particularly costly, the percentages are even higher. In my 1996 Senate campaign, where the average cost of a prime time television advertisement was nearly \$50,000, 82 percent of all the money raised went to television advertising. And there is no reason to believe that these numbers will not continue to rise.

But while the problem is clear, the solution remains elusive. Since this investigation began, the Senate has twice considered campaign finance reform legislation, and twice the Republican majority has thwarted those efforts, despite the support of a majority of the Senate. During that time, several proposals were offered that would have addressed the problem of television costs. First, the original McCain-Feingold campaign finance reform legislation included

discounted and free television time for candidates who accepted expenditure limits. After that provision was removed from the McCain-Feingold bill, a variety of amendments were proposed, but never voted on, to grant television discounts to candidates. I introduced an amendment that would have granted candidates substantial discounts on air time if the candidate appeared in his own ad. The goal of the amendment was to reduce the cost of air time for candidates while at the same time acting as a negative incentive to running attack ads. Finally, the Federal Communications Commission is examining rulemaking to make free or discounted air time part of broadcasters public service requirement. Despite these efforts, however, to date no reform has been enacted.

Until we address the astronomical cost of television advertising, the system will continue to demand more and more fundraising. And as this pressure increases, the instances of improper and illegal practices will undoubtedly rise. By failing to fully examine the impact of the cost of air time on the campaign finance system and recommend appropriate reform legislation, I believe the Committee missed a great opportunity to focus the public debate and create a basis for meaningful reform.

II. AFL-CIO Objections to Committee Subpoenas

The majority attempts to make the AFL-CIO the scapegoat for a variety of problems it encountered during the investigation. Most notably, the majority accuses the AFL-CIO of being “obstructionists” because of the actions it took in objecting to the Committee’s subpoenas. I believe the accusation of “obstruction” against the AFL-CIO is unjustified and sounds a dangerous note for the rights of any citizen called before a committee of Congress.

What the majority characterizes as an “obstruction” was in fact the submission of legal objections: legitimate First Amendment challenges to the power of the Committee to inquire into legitimate political activities of a private organization. The AFL-CIO submitted lengthy, fully-reasoned memoranda of law in support of their positions. Furthermore, several similarly situated organizations, aligned with both the Democratic and Republican parties, joined the AFL-CIO in making these objections.

By guaranteeing the freedom of speech and association, the Constitution gives organizations such as the AFL-CIO the right to raise issues of this nature. Indeed, it is exactly this type of action by a majority that the First Amendment was created to guard against. A review of the memoranda and correspondence submitted by the AFL-CIO to the Committee demonstrates that the AFL-CIO raised these issues in a manner entirely consistent with the rules of this Committee and of the Senate.

I believe that any effort by the majority to deny a private party the right, within the rules, to assert legal objections based on the most basic constitutional principles is both unwise and unlawful. To the extent the majority’s actions or its report insinuates such a position, I am obliged to register my firm objection. This Committee cannot — and should not attempt to — set itself above the law.

III. Guam

The majority’s zealous pursuit of a foreign money connection had some very unfortunate consequences. One example is the misleading and damaging statements made about political contributions of United States citizens from the territory of Guam. The Majority and many others

often treated the people of Guam as if they were non-citizens, for no better reason than geographic proximity to Asian countries. No evidence of truth to the alleged violations or any impropriety was uncovered. The fact is that the people of Guam had every right to participate in the political process and should be praised for doing so. By casting such a wide, careless net of blame, we have chilled political participation among United States citizens in Guam and others throughout our nation. I believe the residents of Guam deserve our profound apology, and our encouragement to remain involved in the political process.

Endnotes

1. The Committee held thirty one days of public hearings. Only four of these days were devoted to campaign finance reform. The testimony of these days was informative, however, it was not as comprehensive as needed and the immediate return to other investigative topics limited its usefulness as a catalyst for reform.
2. Testimony of Curtis Gans, 10/24/97 Hrg., p. 158.
3. Id. at 157.
4. Testimony of Ann McBride, 10/24/97 Hrg., p. 58.
5. Congressional Research Service, Free and Reduced-rate Television time for Political Candidates, 7/7/97, p. 5.
6. Id. at 4.